IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4340 OF 2004

Mesuka Engineering Co. Pvt. Ltd. .. Applicant.

V/s.

The State of Maharashtra & Anr. .. Respondents.

Shri A.H.H. Ponda for Applicant.
Shri A.S. Gadkari, APP for the Respondent No.1.
M/s. Kokila Karla for Respondent No.2 for Respondent No.2.

CORAM : A.M.KHANWILKAR, J.
DATED : 02.11.2004

PC :-

. Heard counsel for the parties.

2. This Application takes exception to the order passed by the court below dated 27th Septemebr, 2004, releasing Respondent No.2 on bail even though no case was pending before it as the criminal action instituted against Respondent No.2 was finally disposed of by the Magistrate on 13th August, 2004. In para 31 of the judgement of the Magistrate, it is clearly recorded that the accused as well as his Advocate were absent. Be that as it may. The fact remains that Respondent No.2 has been convicted and sentenced to suffer simple imprisonment for one year

and pay fine of Rs. 5,000/- indefault to suffer S.I. for six months vide section 255 (2) of Cri. Procedure Code. Besides, Respondent No.2 has been directed to pay compensation or damages to the Applicant, quantified at Rs. 25,00,000/- with interest at 12%/- per annum till realisation of the entire claim from the date on which cheque was issued. Although the matter was finally disposed of by decision dated 13th August, 2004, an application was moved before the same Magistrate by Respondent No.2 for releasing on bail. This appilcation was filed on 14th September, 2004, which was resisted by the Applicant. Nevertheless, the Magistrate proceeded to release the Respondent on bail by order dated 27th September, 2004, which is under challenge in the present applciation.

3. After hearing the learned counsel for the parties, I have no hesitation in accepting the submissions canvassed on behalf of the Applicant that the Magistrate has become functus officio after disposal of the criminal case against Respondent No.2 and it was not open to him to grant bail on the application as filed by Respondent No.2 at a later date. In other words, the order as passed by the Magistrate is without jurisdiction and therefore, the

same will have to be set aside. Accordingly, Respondent No.2 is directed to be taken into custody forthwith. But the counsel for Respondent No.2 states that Respondent No.2 is presently undergoing treatment for a serious ailment and he will not be in a position to move at least for a period of two weeks. In these peculiar facts and circumstances, while allowing this application it is ordered that Respondent No.2 is granted time to surrender before the appellate court, consequent to which his bail application will be considered on its own merits in accordance with the law without being influenced by any of the observations made in this order. Respondent No.2 shall surrender before the appellate court on or before 16th November, 2004.

. Ordered accordingly.

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